Canadian Human Rights Tribunal

2007–08

Departmental Performance Report

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Minister of Justice and Attorney General of Canada

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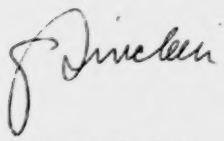
Section I — Departmental Overview

Chairperson's Message

This year the validity and purpose of human rights institutions were called into question in a highly polarized debate that pitted a single provision of the *Canadian Human Rights Act* (CHRA) against the constitutional right to freedom of speech. Section 13 of the CHRA prohibits telecommunications or internet messages that are likely to promote hatred or contempt of minority groups. The narrow focus of this debate has obscured the important protections afforded by the CHRA beyond s. 13 and the immense benefits that all Canadians enjoy precisely because of human rights statutes.

The Government of Canada has set a goal to make Canada a diverse society that promotes linguistic duality and social inclusion. This is a tall order, achieved neither by magisterial edict nor by wishful thinking. The existence of federal and provincial human rights acts, commissions and tribunals, however, demonstrates our commitment to this lofty agenda.

As the custodian of a vital piece of Canada's human rights protection machinery, the Canadian Human Rights Tribunal helps to define equality and normalize diversity. Through its written decisions of the past three decades it has helped diversify the federally regulated workplace and informed the jurisprudence that affects Canadian society generally in such areas as pay equity, discrimination and harassment on the basis of sex or sexual orientation, and the duty to accommodate persons with disabilities. Although the Tribunal does not *promote* human rights (that is the job of the Canadian Human Rights Commission), it does advance the aims of the CHRA by providing a forum where human rights complaints can be scrutinized and resolved and by making the hard judgment calls that transport the Act from the statute books to the streets.



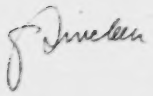
J. Grant Sinclair

Management Representation Statement

I submit for tabling in Parliament, the *2007–08 Departmental Performance Report* for the Canadian Human Rights Tribunal.

This document has been prepared based on the reporting principles contained in the *Guide for the Preparation of Part III of the 2007–2008 Estimates: Reports on Plans and Priorities and Departmental Performance Reports*:

- It adheres to the specific reporting requirements outlined in the Treasury Board Secretariat guidance;
- It is based on the department's Strategic Outcome(s) and Program Activity Architecture that were approved by the Treasury Board;
- It presents consistent, comprehensive, balanced and reliable information;
- It provides a basis of accountability for the results achieved with the resources and authorities entrusted to it; and
- It reports finances based on approved numbers from the Estimates and the Public Accounts of Canada.



Name: J. Grant Sinclair
Title: Chairperson, Canadian Human Rights Tribunal

Summary Table

Reason for Existence

The Canadian Human Rights Tribunal is a quasi-judicial body that hears complaints of discrimination referred by the Canadian Human Rights Commission and determines whether the activities complained of contravene the *Canadian Human Rights Act* (CHRA). The purpose of the CHRA is to protect individuals from discrimination and to promote equal opportunity. The Tribunal also decides cases brought under the *Employment Equity Act* and, pursuant to section 11 of the CHRA, determines allegations of wage disparity between men and women doing work of equal value in the same establishment.

The Tribunal's mission is to provide Canadians with a fair and efficient process of inquiry and determination of complaints of discrimination against federally regulated employers and service providers. The CHRA prohibits employment-related discrimination, including harassment, and prohibits discrimination in the provision of services regulated by federal jurisdiction. In 1996 the Tribunal's mandate was expanded to include the adjudication of complaints under the *Employment Equity Act*. The statute requires all federal government departments, as well as federally regulated public sector employers with more than 100 employees, to maintain a workforce that reflects the labour force availability of visible minorities, women, indigenous people and persons with disabilities.

For more information on the Tribunal's organization, operations and members, see About the CHRT on the Tribunal website at **www.chrt-tcdp.gc.ca**.

Financial Resources (millions of dollars)

2007–08		
Planned spending	**Total authorities**	**Actual spending**
4.3	4.5	4.2

Human Resources

2007–08		
Planned	**Actual**	**Difference**
26	26	–

Program Activity Architecture

Strategic outcome: Individuals have equal access, as determined by the *Canadian Human Rights Act* (CHRA) and the *Employment Equity Act* (EEA), to the opportunities that exist in Canadian society through the fair and equitable adjudication of human rights and employment equity cases that are brought before the Canadian Human Rights Tribunal.
Alignment to Government of Canada outcomes: a diverse society that promotes linguistic duality and social inclusion
Program activity: Public hearings under the *Canadian Human Rights Act*
Description: Inquire into complaints of discrimination to decide if particular practices have contravened the *Canadian Human Rights Act*
Expected results: • Clear and fair interpretation of the *Canadian Human Rights Act* • An adjudication process that is efficient, equitable and fair to all who appear before the Tribunal • Meaningful legal precedents for the use of employers, service providers and Canadians
Performance indicators: • Client satisfaction • Serving Canadians • Number or cases commenced, pending, completed, withdrawn/discontinued by time lines • Number or cases heard • Number of judicial reviews (overturned/upheld)
Program activity: Review directions given under the *Employment Equity Act*
Description: Conduct hearings into requests from employers to review decisions issued to them by the Canadian Human Rights Commission or into applications from the Commission to confirm directions given to employers.
Expected results: • Clear and fair interpretation of the *Employment Equity Act* • An adjudication process that is efficient, equitable and fair to all who appear before the Tribunal • Meaningful legal precedents for the use of employers, service providers and Canadians

Departmental Priorities from *2007–08 Report on Plans and Priorities*: Public Hearings under the *Canadian Human Rights Act*

Priority (all ongoing)	Expected result	Performance status	Planned spending	Actual spending
Monitor Tribunal inquiry performance targets.	• Performance measurements confirmed • An efficient inquiry process	Met Partially met, ongoing	N/A	N/A
Undertake a Management Accountability Framework assessment.	Modern public service management that fully supports accountability and results for Canadians	Met, ongoing	$15,000	N/A
Align the Tribunal's records management system and platform with government information and technology management policies.	The Tribunal's information classification and retrieval systems, as well as its supporting technology platform, sustain business delivery improvement, legal and government policy compliance, citizen access, and accountability by March 2008	Partially met, ongoing	$65,000	$120,750

Summary of Departmental Performance

The tools used to assess and report on Tribunal activities, results, outputs and outcomes have evolved in tandem with public service modernization initiatives of the past decade. A new Management Resources and Results Structure and Program Activity Architecture were approved by the Treasury Board in May 2007.

These tools (MRRS and PAA) had not been finalized when the Tribunal prepared its 2007–08 *Report on Plans and Priorities* (RPP). Like the RPP on which it is based, the current DPR speaks to three management priorities, all of which address the systems (i.e., management and oversight services, human resources management services, information technology services, and information management services) that underpin the Tribunal's ability to execute its primary program, namely conducting inquiries into complaints referred to it by the Canadian Human Rights Commission. The summary table above reports exclusively on results relating to the three priorities identified in the 2007–08 RPP. However, the discussion that follows (as well as the analysis pursued in Section II) speaks more broadly to the expected and actual results of the Tribunal's principal program activity — the hearing and resolution of complaints under either act.

Operating Environment

The Tribunal is a quasi-judicial body of first instance (i.e., it is the first "court" that passes judgment on the validity of a complaint of discrimination brought by a complainant.) However, even *before* a complaint is referred to the Tribunal, it is investigated by the Canadian Human Rights Commission, which screens all complaints, investigates them as necessary, and dismisses or resolves the vast majority of them. Once a case is referred by the Commission, the Tribunal has no authority to return it. Thus the size of the Tribunal's caseload — and, therefore, its ability to meet targeted timelines for case processing and decision writing — is greatly influenced by the volume of cases referred in any year, or, more precisely, over any three-year period, since inquiries into complaints may extend, for reasons principally driven by the parties, for more than a year from their referral date.

The Tribunal is funded by annual appropriations from Parliament through a program expenditures vote to cover the cost of hearings, mediations and administrative operating expenditures (regardless of the number of cases referred by the Commission). Actual spending for 2007–08 was $4.2 million. Over the last decade, funding for Tribunal hearings has remained relatively stable even as its caseload fluctuated widely.

Risk Management Issues

The Tribunal hears cases referred by the Canadian Human Rights Commission, so the number of cases referred annually is unpredictable. Because the Commission dismisses or resolves about 90 percent of the cases that come before it, the Tribunal's cases are exceptional; they typically involve complex legal questions, new human rights issues or conflicting evidence that needs to be decided in a more formal testimonial environment (i.e., quasi-judicial forum).

Moreover, since 2002 the Commission no longer participates in all of the cases referred to the Tribunal; complainants who once relied on Commission counsel to help guide their case must now proceed on their own. For the Tribunal, inquiries where complainants are unrepresented require considerably more time and resources to process. The filing of documents with the Tribunal is routinely delayed, additional case management attention is required, and the hearings themselves generally move much more slowly.

To offset these challenges, the Tribunal reinstated its mediation services in 2003, streamlined its operating procedures to meet the needs of unrepresented parties, and adopted an aggressive case management approach that actively monitors progress on every case and keeps the complaint process moving unimpeded.

Meanwhile, ongoing pressure to contribute effectively in horizontal government initiatives such as public service modernization is also straining the Tribunal's resources. To ease this burden, the Tribunal has availed itself of new technologies and has actually sought out and participated, wherever possible, in interdepartmental collaborations.

Performance Information

Priority 1: Monitor Tribunal inquiry performance targets.

This year the Tribunal sought to determine whether three of its inquiry performance targets were useful and realistic. These targets, introduced by the Tribunal in 2003, sought to establish goals for the timeliest and most effective inquiry process possible:

- begin hearings within 6 months of receiving a complaint referral in 80 percent of cases;
- render decisions within 4 months of the close of a hearing in 90 percent of cases; and
- conclude inquiries within 12 months in 80 percent of cases.[1]

Case statistics maintained manually and generated from the automated case management system indicate that all three targets proved elusive in 2007–08. None of the year's hearings began within the desired time, due entirely to the lack of readiness of the parties. So pervasive was this problem that the Tribunal issued its first ever Practice Note found on the Tribunal's website at **www.chrt-tcdp.gc.ca** under About the CHRT – Tribunal Rules and Procedures, stressing the importance of timely hearings and decisions. The note, addressed both to the parties and to Tribunal members, urged all to be vigilant and conscientious in helping to expedite the inquiry process as expected by the *Canadian Human Rights Act*.

Meanwhile, of the 19 decisions it rendered last fiscal year,[2] the Tribunal issued 4 decisions within four and a half months of the close of the hearing (instead of the sought-after target of 17, or 90 percent, within four months of the close of hearings), but none of the 36 cases disposed of this year were concluded within the targeted 12-month timeline.

The volume of active cases, the increasing complexity of the complaints referred and the absence of legal representation for many complainants were again the main factors impeding the Tribunal from meeting its targets. Nevertheless, the resolution of cases was considerably expedited by active case management by the Tribunal, expert mediation services by Tribunal members and an efficient scheduling system to ensure that hearings occur at the earliest availability of the parties.

The Tribunal implemented an active case management system in 2005 to help parties prepare their cases more effectively and to alert Tribunal members to obstacles that are likely to delay a hearing process but could be resolved during the pre-hearing phase of an inquiry. Such issues are becoming increasingly common and they routinely delay the inquiry process if not identified and resolved early on. Anecdotal evidence suggests that early intervention by a Tribunal member in resolving pre-hearing issues has helped prevent cases from lingering unduly. The numbers also bear this out; despite a dramatic

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[1] Based on the year's performance and generally accepted industry standard, the Tribunal revised all these targets in the 2008–09 Program Activity Architecture.

[2] The table on judicial reviews in Section II cites this figure as 20 because Tribunal statistics are aggregated on a calendar year basis.

spike in case referrals between 2003 and 2005, only one pre-2005 complaint remained outstanding at the end of March 2008.

Meanwhile, given that the generally accepted service standard for rendering decisions in the judicial sphere is six months, the Tribunal has decided to slightly extend its own target for decision writing. It will now aim to deliver a decision within four months of the close of hearing in 80 percent of cases, rather than the previously targeted 90 percent of cases.

The Tribunal's two other time-related performance targets were also adjusted downward by 10 percent in each category for 2008–09.

These adjusted targets are reflected in the new PAA and MRRS in the 2008–09 Report on Plans and Priorities available on the Tribunal website at **www.chrt-tcdp.gc.ca** under Reports and Disclosures.

Priority 2: Undertake a Management Accountability Framework assessment.

The results of the Treasury Board of Canada Secretariat assessment of the Tribunal against its Management Accountability Framework (MAF) were released in 2007–08. The Tribunal was commended for its largely strong or acceptable assessment ratings. This was deemed noteworthy for a small organization with limited resources, particularly given that it was the Tribunal's first assessment against the MAF. The Tribunal has, nevertheless, continued to build on its areas of strength and has addressed both areas identified as "opportunities for improvement."

In 2007–08, the Tribunal:

- completed drafts of an Integrated Business and Human Resource Plan and guidelines for continuous learning;
- implemented a Delegation of Human Resources Authorities Instrument;
- strengthened its risk management framework by integrating risk as a foundational premise in considerations for management decision-making;
- conducted vulnerability and threat and risk assessments of its information and technology systems and implemented new security technology and procedures, in response to opportunities for improvement in the areas of Information Management and Information Technology Management identified in the Treasury Board Secretariat's MAF assessment;
- attained certification and accreditation under the Treasury Board's Standard for Management of Information Technology Security;
- implemented a new intranet to enhance employee access to Tribunal and government-wide policies that relate to their rights, responsibilities and obligations as public servants; and
- implemented a new Employee Appreciation and Awards Guideline and Program to strengthen the recognition of Tribunal employees' contributions.

Tribunal personnel continued to participate in an advisory capacity to the Comptroller General of Canada, through the Small Agency Administrators Network (SAAN), to assist in the development and implementation of procedures for small departments and agencies (SDAs) to comply with the Treasury Board's internal audit policy. The Tribunal has also begun the development of an audit plan, based on its risk management framework, which it expects to implement in 2008–09. As well, the Tribunal has taken the lead on the SAAN initiative to work with the central agencies and within the SDA community to find and develop opportunities for shared internal services.

Priority 3: Align the Tribunal's records management system and platform with government information and technology management policies.

In accordance with the Treasury Board's Standard of Management of Information Technology Security (MITS), the Tribunal completed vulnerability and threat and risk assessments of its network infrastructure in 2007–08 and implemented new security technology and procedures. The Tribunal's network infrastructure has now received MITS certification and accreditation; the Tribunal is planning to conduct an audit of its information technology system in 2008–09.

In 2007–08, the Tribunal:

- substituted paper distribution of decisions and rulings with an Internet-based notification and access system and replaced hard-copy transcriptions with digital voice recordings at its hearings, saving both time and paper and offering more efficient information access for the Tribunal's clients and the Canadian public in general;
- completed an upgrade to its intranet to ensure on-line access by employees to relevant Tribunal and government policies, employment-related information, operational schedules and hearing information; and
- installed a new web-based compensation application that provides employees with up-to-date, on-line access to compensation data.

To offset the limitations attributable to its tiny size — the Tribunal has a human resource complement of 26 full-time equivalents — Tribunal management continued to collaborate with its federal government counterparts in search of ways to share services. Close consultation with central agencies through the Community of Federal Agencies, the Small Agency Administrators Network and the Heads of Information Technology ensures that the Tribunal remains aligned with the government's information technology and information management policies.

Section II — Analysis of Program Activities by Strategic Outcome

The Tribunal's single strategic outcome is that individuals have equal access, as determined by the *Canadian Human Rights Act* and the *Employment Equity Act*, to the opportunities that exist in Canadian society through the fair and equitable adjudication of human rights and employment equity cases that are brought before the Canadian Human Rights Tribunal. Its ongoing program priority is to carry on business as usual, i.e., to dispose of the complaints brought before it by means of a fair and orderly process of inquiry, including mediated settlement if possible, public hearings and written decisions.

Getting Results

As the custodian of a vital piece of Canada's human rights protection machinery, the Tribunal benefits Canadians by increasing the thread count in the fabric of Canadian society. In providing a forum where human rights complaints can be scrutinized and resolved and by articulating findings and observations on important issues of discrimination in the form of formal decisions, the Tribunal gives effect to the principles enshrined in federal human rights legislation. The proximate result of the Tribunal's program is that complainants can air their grievances and achieve closure in a respectful, impartial forum. In the longer term, Tribunal decisions create meaningful legal precedents for use by employers, service providers and Canadians at large.

Although the Tribunal (including its predecessors) has been part of the human rights landscape in Canada for decades, Tribunal decisions have not always enjoyed the authority they do today. Until recently, allegations of institutional bias and lack of independence undermined the effectiveness of Canada's human rights enforcement machinery, and requests for judicial reviews of Tribunal decisions and rulings were commonplace. For example, all eight of the Tribunal's written decisions issued in 1998 were challenged. Statutory changes in 1998 raised the stature and perceived independence of the Tribunal, resulting in fewer challenges to Tribunal decisions and greater approbation by the Federal Court when Tribunal decisions are appealed. Ultimately, this acceptance benefits both complainants and respondents, since Tribunal decisions are increasingly perceived as definitive and the parties can get on with their lives. Written decisions become part of the public record. As well as specifying whether a respondent's actions have run afoul of the Act, Tribunal decisions provide guidance, where appropriate, on how to bring policies and practices into line with the legislation to prevent discrimination in future. Such explanations benefit not only the parties involved, but also all employers and service providers and their employees and clients. It is therefore an expected (and sought after) result of Tribunal decisions that they will be accepted by the parties involved and, if judicially challenged, upheld by the reviewing court. Such acceptance benefits all of society since it expedites justice and reduces the cost of protracted appeals.

That's why the Tribunal monitors the number of judicial reviews of its decisions and the proportions of these that uphold or overturn Tribunal decisions.

As the table below illustrates, a majority of the Tribunal's 58 decisions issued in the past four years have remained unchallenged.

Judicial Reviews

	2004	2005	2006	2007	TOTAL
Cases referred	139	99	70	82	390
Decisions rendered	14	11	13	20	58
Upheld	6	1	0	0	7
Overturned	0	0	2	0	2
Judicial review withdrawn or struck for delay	1	0	1	0	2
Judicial review pending	0	1	1	7	8
Total challenges	**7**	**2**	**4**	**7**	**20**

What *has* been a challenge in recent years is the effort required to provide speedy justice to complainants. The complexity of cases, the vigorous advocacy at inquiries and the amount of time that Tribunal members must spend resolving pre-hearing issues continue to test the Tribunal's resourcefulness.

The Tribunal is therefore pleased to report that, despite its uncharacteristically heavy caseload over the past four years, it has avoided developing a case backlog. This success is largely attributable to an efficient case management process introduced in 2005 and the success of mediations. Still, at the end of 2007,[3] 98 case files remained active, compared with 100 a year earlier and 147 in 2005.

Despite these challenges, the Tribunal has remained steadfast in its commitment to striving for the earliest possible disposition of cases. The Tribunal expects that, by helping the parties determine with greater precision which issues must be decided at hearing, active case management will continue to yield major process improvements by reducing the number of issues to be addressed at hearing.

In the meantime, the Tribunal has enjoyed continuing success with its mediation program. In 2007–08, 71 percent[4] of Tribunal-mediated complaints were settled to the satisfaction of the parties, compared with 64 percent of mediated cases referred during 2003 and 2004, 87 percent of mediated cases from 2005, and 88 percent of mediated cases from 2006. Combined with the business process improvements outlined above, the

[3] Case referral and processing statistics are kept on a calendar year basis only.
[4] Several files opened late in the fiscal year are still in the early stages of inquiry. As a result, the settlement rate for cases opened in 2007–08 is expected to increase.

growing success of the Tribunal's mediation service has enabled the Tribunal to process larger numbers of complaints without the need for more financial resources.

The Effect of Recent Tribunal Decisions on Canadians

As a key mechanism of human rights protection in Canada, the Tribunal gives effect to the Canadian ideals of pluralism, equity, diversity and social inclusion.

In 2007–08, the Tribunal issued 19 final decisions determining whether the CHRA was infringed in a particular instance (subject to rights of judicial review before the Federal Court). Although these decisions have a direct and immediate impact on the parties involved, they also have more far-reaching repercussions, giving concrete and tangible meaning to an abstract set of legal norms. Although the CHRA prohibits discriminatory practices and exempts certain discriminatory practices from remedy, it does not provide examples. Nor does the Act define the term discrimination. Tribunal decisions are therefore the primary vehicle through which Canadians see the impact of the legislation and learn the extent of their rights and obligations under the Act.

The following summaries of Tribunal decisions from 2007–08 illustrate the kinds of complaints brought before the Tribunal and how such cases affect all Canadians. Summaries of these and other Tribunal decisions rendered in 2007 can be found in the Tribunal's 2007 annual report.

Cole v. Bell Canada **2007 CHRT 7**

Upon her return from maternity leave, a Bell Canada employee requested a modified schedule to enable her to breastfeed her baby, who had been born with a serious health condition and needed prolonged breastfeeding to strengthen his immune system. In her complaint she alleged that her employer's decision to deny her request was discrimination on the basis of sex and family status in violation of the CHRA.

In its decision, the Tribunal found that Bell Canada had treated the complainant's request for accommodation as a medical issue. Requesting medical notes and reports in support of her requests and periodic updates from the complainant's physician to support the continuation of the request of accommodation, Bell Canada had characterized the complainant as a disabled person. The Tribunal also found that by discouraging the complainant's request for daily unpaid leave to nurse her child, Bell Canada subjected the complainant to adverse differential treatment on the basis of her sex within the meaning of section 7 of the Act. The Tribunal further found that Bell Canada had no policy on accommodating breastfeeding, and that it had failed to prove that the complainant's early departure, up to one hour before the regular end of her shift to nurse her child, would have caused the organization undue hardship.

The Tribunal ordered Bell Canada to prevent such discrimination from recurring. Bell Canada was ordered to establish policies relating to employee requests for breastfeeding-related accommodation that were consistent with the findings in its decision. The complainant was awarded compensation for pain and suffering and compensation for Bell Canada's reckless conduct. She was also compensated for lost income for the wages she

failed to earn during her visits to her physician's office to obtain the requested medical notes and reports.

Results for Canadians
While significant attention has been given in human rights jurisprudence to a woman's right to breastfeed in a public place, the *Cole* decision marks the first opportunity the Tribunal has had to apply the workplace accommodation principles in the CHRA to a female employee's decision to nurse her child. A noteworthy aspect of this decision is the Tribunal's exploration of the distinction between the physiological aspects of gender (in this instance, of pregnancy and maternity) and the physiological aspects of disability. The fact that accommodating maternity in the workplace has a physiological rationale does not require that maternity be "medicalized" or treated as a disability. Disability accommodation and gender accommodation remain conceptually different from one another. This analysis will serve as a useful foundation for future discussion.

Knight v. Société de transport de l'Outaouais **2007 CHRT 15**

Mr. Knight alleged that the respondent, the Société de transport de l'Outaouais (STO), discriminated against him because of a disability in relation to employment, contrary to section 7 of the CHRA.

Mr. Knight had earlier been involved in a workplace accident that caused him to injure his right hand. Following the accident, the complainant received income replacement benefits from the Commission de la Santé et de la Sécurité au Travail (CSST) and was assessed by a doctor who determined that he had permanent functional limitations.

When the complainant applied for a position with the respondent, he was asked to undergo a medical exam. When the doctor learned of the complainant's disability, he told him that his hiring would be delayed until he could review the CSST's file. After the review, the doctor determined that the complainant did not meet the requirements for the position. The STO later informed him that he had not been hired.

In reviewing the evidence, the Tribunal found that, although the respondent had considered accommodating the complainant, it had erroneously concluded that doing so would cause it undue hardship. For example, the possibility of offering the complainant a driver's job was never properly examined and, given the circumstances, too much weight was attached to the effect of accommodation on employee morale and the collective agreement. Moreover, the STO relied on the CSST's determination of the complainant's work restrictions, despite the fact that the STO had made its own, more positive observations of the complainant's abilities, and had been provided with a more recent and more positive prognosis from the complainant's physician. For those reasons, the Tribunal substantiated the complainant's allegations and ordered the STO to take steps to integrate him into the workplace and to compensate him for lost wages.

Results for Canadians
This decision examines the interplay between the regime established by Parliament to accommodate disabled persons and provincial statutory regimes that deal with compensation for workplace injury. In both schemes, employers have a duty to accommodate employees who become disabled due to workplace injury. However, a decision by the provincial authority as to a disabled employee's work restrictions is not always binding on an employer that must discharge obligations set out in the CHRA. The *Knight* decision contributes tangibly to the dialogue between these two regulatory regimes, which straddles the constitutional division of powers.

Vilven and Kelly v. Air Canada and Air Canada Pilots Association **2007 CHRT 36 (judicial review pending)**

The complainants, George Vilven and Robert Neil Kelly, had worked for the respondent, Air Canada, since 1986 and 1972, respectively. They alleged that Air Canada discriminated against them on the basis of age, contrary to sections 7 and 10 of the CHRA, by requiring them to retire at age 60. Mr. Kelly also filed a complaint against the Air Canada Pilots Association (ACPA), alleging a contravention of sections 9 and 10 of the CHRA. Finally, the Fly Past 60 Coalition challenged the constitutionality of section 15(1)(c) of the CHRA, claiming it violated section 15(1) of the *Canadian Charter of Rights and Freedoms*.

The Tribunal found that the termination of the complainants' employment with Air Canada on the basis of the mandatory retirement policy established a prima facie case of discrimination under section 7 of the Act. Furthermore, the sole fact that ACPA had agreed to this policy through the collective agreement and pension plan established a prima facie case of discrimination against the union respondent.

However, under section 15(1)(c) of the CHRA, if the respondents could prove that age 60 was the normal age of retirement for similar positions, the case against them would fall. In this situation, the onus to prove that the normal age of retirement was 60 rested with Air Canada since it had greater access to the relevant information and superior financial resources. In comparing Air Canada with other major international airlines, the data revealed that age 60 was the normal age of retirement for the majority of positions in other major airline companies. Moreover, age 60 had been designated as retirement age by the industry in an international standards document. The result was that Air Canada's mandatory retirement policy could not be viewed as a discriminatory practice under the CHRA; it imposed the "normal age of retirement" for similar positions.

With regard to the constitutional challenge put forward to the "normal age of retirement" defence, the Tribunal found that the mandatory retirement policy did not violate the dignity of the complainants and did not fail to recognize them as full and equal members

of society. Thus the section 15 Charter claim failed. For all these reasons, the complaints were dismissed.

Results for Canadians
This decision contributes to the interpretation and understanding of the CHRA in a number of ways. First of all, it provides Canadians with an examination and analysis of the "normal age of retirement" exemption for the otherwise discriminatory practice of mandatory retirement. This exemption has been in the CHRA since its original enactment, but has received relatively little consideration by adjudicators. Secondly, the *Vilven and Kelly* decision addresses an issue of particular significance to the Canadian demographic, examining as it does the impact of an aging workforce on the organization of labour in society. Finally, the decision illustrates how the equality principles mandated by federal human rights legislation measure up against the main equality guarantee enshrined in the *Canadian Charter of Rights and Freedoms*.

Forward v. Canada (Citizenship and Immigration) **2008 CHRT 5**

The complainants, who were born outside Canada and who sought to acquire Canadian citizenship retroactively from birth, alleged that Citizenship and Immigration Canada had discriminated on the basis of sex when it failed to grant citizenship to their mother, who had been born outside Canada to a Canadian mother and an American father. Under the law as it stood at the time of their mother's birth in 1955, a person born abroad could inherit Canadian citizenship only if the person's father was Canadian.

In other words, in situations where only one parent was Canadian, the law differentiated in the transmission of Canadian citizenship depending on the gender of the Canadian parent.

Although the law was later changed to eliminate this distinction for future cases, the complainants were unsuccessful in their claim for retroactive Canadian citizenship. They alleged that the Canadian government's refusal to acknowledge their entitlement from birth to Canadian citizenship constituted adverse differentiation on the grounds of sex in the provision of services. The Tribunal dismissed the complaint.

First, the Tribunal found that citizenship was not a "service" within the meaning of the CHRA, asserting that such a characterization would ignore the fundamental role that citizenship plays in defining the relationship between individuals and the state.

However, the Tribunal also found that (even if citizenship were a service) the complainants were not victims of discrimination within the meaning of the CHRA; the citizenship legislation that abolished differential treatment for the future — but did not

correct it for the past — did not target the complainants, but rather their mother. Yet she was not asserted to be a victim in the complaint and no order was sought for her benefit. Finally, granting the complainants the relief they sought for themselves would have entailed retroactively changing their mother's citizenship status as of her birth; such action was never contemplated by the CHRA.

Results for Canadians

This decision represents one of the few instances where a decision maker has explored the meaning of services in the context of the CHRA and set some limits on the concept. Such guidance is useful since "services" is not defined in the Act and its meaning is harder to delineate than other terms such as "employment."

The decision also offers a thorough discussion of issues that can emerge in cases where the CHRA is invoked in regard to legal situations that pre-date its enactment.

Finally, the decision provides guidance on the notion of standing in the context of the CHRA, a contribution of particular importance because the Act recognizes a potential distinction in any given case between "complainants" and "victims."

Judicial Review of Tribunal Decisions

The majority of Tribunal decisions in fiscal year 2007–08 were not the subject of judicial review proceedings. As noted elsewhere in this report, we perceive the downward trend in judicial reviews as an indicator of a greater acceptance of the Tribunal's interpretation of the CHRA by the parties and the reviewing courts.

Section III — Supplementary Information

Departmental Link to Government of Canada Outcome Areas

Strategic outcome: Individuals have equal access, as determined by the *Canadian Human Rights Act* (CHRA) and the *Employment Equity Act* (EEA), to the opportunities that exist in Canadian society through the fair and equitable adjudication of human rights and employment equity cases that are brought before the Canadian Human Rights Tribunal.				
Program Activity	**Actual Spending, 2007–08**			**Alignment to Government of Canada Outcome**
	Budgetary	**Non-budgetary**	**Total**	
Public Hearings under the *Canadian Human Rights Act*	4.2	0	4.2	A diverse society that promotes linguistic duality and social inclusion
Review Directions Given Under the *Employment Equity Act*	0	0	0	

Note: No funding was provided or expenses were incurred for the program activity, Review Directions Given Under the *Employment Equity Act*, during the period covered by this performance document.

Departmental Performance Tables

Table 1. Comparison of Planned to Actual Spending (including full-time equivalents)

			2007–08			
($ millions)	**2005–06 actual**	**2006–07 actual**	**Main estimates**	**Planned spending**	**Total authorities**	**Total actuals**
Public Hearings under the *Canadian Human Rights Act*	3.8	4.6	4.3	4.3	4.5	4.2
Total	**3.8**	**4.6**	**4.3**	**4.3**	**4.5**	**4.2**
Less: Non-respendable revenue						
Plus: Cost of services received without charge	1.2	1.2	1.2	1.2	1.2	1.1
Total Tribunal spending	5.0	5.8	5.5	5.5	5.7	5.3
Full-time equivalents	26	26				26

Table 2. Voted and Statutory Items

		2007–08 ($ millions)			
Vote or Statutory Item	**Truncated Vote or Statutory Wording**	**Main estimates**	**Planned spending**	**Total authorities**	**Actual spending**
15	Program expenditures	3.9	3.9	4.1	3.8
(S)	Contributions to employee benefit plans	0.4	0.4	0.4	0.4
	Total	**4.3**	**4.3**	**4.5**	**4.2**

Electronic Tables

The following tables are available on the Treasury Board Secretariat's website at: **www.tbs-sct.gc.ca/dpr-rmr/2007-2008/index-eng.asp**.

- Table 3, Response to Parliamentary Committees and External Audits
- Table 4, Internal Audits and Evaluations

Table 5. Travel Policies

Comparison to the TBS Special Travel Authorities The Canadian Human Rights Tribunal follows the TBS Special Travel Authorities. **Comparison to the TBS Travel Directive, Rates and Allowances** The Canadian Human Rights Tribunal follows the TBS Travel Directive, Rates and Allowances.

Table 16. Financial Statements

Financial statements are prepared in accordance with accrual accounting principles. The unaudited supplementary information presented in the financial tables in the DPR is prepared on a modified cash basis of accounting in order to be consistent with appropriations-based reporting. Note 3 on page 24 of the financial statements reconciles these two accounting methods.

Canadian Human Rights Tribunal
Statement of Management Responsibility

Responsibility for the integrity and objectivity of the accompanying financial statements for the year ended March 31, 2008 and all information contained in these statements rests with departmental management. These financial statements have been prepared by management in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector.

Management is responsible for the integrity and objectivity of the information in these financial statements. Some of the information in the financial statements is based on management's best estimates and judgment and gives due consideration to materiality. To fulfil its accounting and reporting responsibilities, management maintains a set of accounts that provides a centralized record of the department's financial transactions. Financial information submitted to the *Public Accounts of Canada* and included in the department's *Departmental Performance Report* is consistent with these financial statements.

Management maintains a system of financial management and internal control designed to provide reasonable assurance that financial information is reliable, that assets are safeguarded and that transactions are in accordance with the *Financial Administration Act*, are executed in accordance with prescribed regulations, within Parliamentary authorities, and are properly recorded to maintain accountability of Government funds. Management also seeks to ensure the objectivity and integrity of data in its financial statements by careful selection, training and development of qualified staff, by organizational arrangements that provide appropriate divisions of responsibility, and by communication programs aimed at ensuring that regulations, policies, standards and managerial authorities are understood throughout the department.

The financial statements of the department have not been audited.

J. Grant Sinclair
Chairperson

Gregory M. Smith
Executive Director and Registrar

Ottawa, Canada Date 18 JUL 08

Canadian Human Rights Tribunal Statement of Operations (unaudited) for the year ended March 31 (in dollars)

	2008	2007
Expenses		
Operating Expenses		
Salaries and employee benefits	2,606,198	2,564,490
Rentals	1,114,759	1,320,641
Professional services	890,934	1,223,070
Transportation and telecommunications	420,105	452,578
Amortization	67,589	51,545
Materials and supplies	62,392	68,982
Repair and maintenance	34,957	25,469
Communications	26,855	39,892
Miscellaneous	13,990	9,700
Total Expenses	**5,237,779**	**5,756,367**
Revenues		
Miscellaneous revenues	1,829	25
Total Revenues	**1,829**	**25**
Net Cost of Operations	**5,235,950**	**5,756,342**

Canadian Human Rights Tribunal Statement of Financial Position (unaudited) at March 31 (in dollars)

	2008	2007
Assets		
Financial Assets		
Accounts receivable and advances (Note 4)	51,634	53,471
Total Financial Assets	51,634	53,471
Non-financial Assets		
Prepaid expenses	14,000	14,000
Tangible capital assets (Note 6)	150,770	96,654
Total Non-financial Assets	**164,770**	**110,654**
TOTAL ASSETS	**216,404**	**164,125**
Liabilities		
Accounts payable and accrued liabilities (Note 5)	337,267	383,003
Vacation pay and compensatory leave	69,007	83,511
Employee severance benefits (Note 7b)	450,284	431,825
TOTAL LIABILITIES	**856,558**	**898,339**
Equity of Canada	(640,154)	(734,214)
TOTAL LIABILITIES AND EQUITY OF CANADA	**216,404**	**164,125**

Canadian Human Rights Tribunal Statement of Equity of Canada for the year ended March 31 (unaudited) (in dollars)

	2008	2007
Equity of Canada, beginning of year	**(734,214)**	**(623,037)**
Net cost of operations	(5,235,950)	(5,756,342)
Current year appropriations used (Note 3)	4,177,771	4,561,439
Revenue not available for spending	(1,829)	(25)
Refund of previous year expenses	(10)	(4,300)
Change in net position in the Consolidated Revenue Fund (Note 3)	43,899	(77,891)
Services received without charge from other government departments and agencies (Note 9)	1,110,179	1,165,942
Equity of Canada, end of year	**(640,154)**	**(734,214)**
The accompanying notes form an integral part of these financial statements.		

Canadian Human Rights Tribunal Statement of Cash Flow (unaudited) for the Year Ended March 31 (in dollars)

	2008	2007
Operating Activities		
Net cost of operations	5,235,950	5,756,342
Non-cash items:		
Amortization of capital assets	(67,589)	(51,545)
Services provided without charge by other government departments	(1,110,179)	(1,165,942)
Variations in Statement of Financial Position:		
Increase (decrease) in accounts receivables and advances	(1,837)	32,665
Increase (decrease) in liabilities	41,781	(98,434)
Cash Used by Operating Activities	4,098,126	4,473,086
Capital Investment Activities		
Acquisitions of tangible capital assets	121,705	6,137
Financing Activities		
Net cash provided by Government of Canada	4,219,831	4,479,223
The accompanying notes and schedules form an integral part of these financial statements.		

Canadian Human Rights Tribunal: Notes to the Financial Statements (unaudited)

1. Authority and Objectives

The Canadian Human Rights Tribunal (the Tribunal) is a quasi-judicial body created by Parliament under the *Canadian Human Rights Act* to inquire into complaints of discrimination and to decide if particular practices have contravened the *Act*. The Tribunal may only inquire into complaints referred to it by the Canadian Human Rights Commission, usually after a full investigation by the Commission. The Commission resolves most cases without the Tribunal's intervention. Cases referred to the Tribunal generally involve complicated legal issues, new human rights issues, unexplored areas of discrimination, or multifaceted evidentiary complaints that must be heard under oath.

The Tribunal's mandate also includes hearing matters under the *Employment Equity Act* (EEA).

2. Summary of Significant Accounting Policies

These financial statements have been prepared in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector. Significant accounting policies are as follows:

a) **Parliamentary appropriations** – The Canadian Human Rights Tribunal is primarily financed by the Government of Canada through Parliamentary appropriations. Appropriations provided to the Canadian Human Rights Tribunal do not parallel financial reporting according to generally accepted accounting principles since they are primarily based on cash flow requirements. Consequently, items recognized in the statement of operations and the statement of financial position are not necessarily the same as those provided through appropriations from Parliament. Note 3 provides a high-level reconciliation between the bases of reporting.

b) **Net Cash Provided by Government** – The Canadian Human Rights Tribunal operates within the Consolidated Revenue Fund (CRF), which is administered by the Receiver General for Canada. All cash received by the Canadian Human Rights Tribunal is deposited to the CRF and all cash disbursements made by the Canadian Human Rights Tribunal are paid from the CRF. The net cash provided by Government is the difference between all cash receipts and all cash disbursements including transactions between departments of the federal government.

c) **Change in net position in the Consolidated Revenue Fund** is the difference between the net cash provided by Government and appropriations used in a year, excluding the amount of non-respendable revenue recorded by the department. It results from timing differences between when a transaction affects appropriations and when it is processed through the CRF.

d) **Revenues** – These are accounted for in the period in which the underlying transaction or event occurred that gave rise to the revenues. The majority of revenues are for fees related to Access to Information Requests and for penalties levied against participants in hearings.

e) **Expenses** – Expenses are recorded on the accrual basis:
- Vacation pay and compensatory leave are expensed as the benefits accrue to employees under their respective terms of employment.
- Services provided without charge by other government departments for accommodation, the employer's contribution to the health and dental insurance plans and legal services are recorded as operating expenses at their estimated cost.

f) **Employee future benefits**

i. **Pension benefits:** Eligible employees participate in the Public Service Pension Plan, a multiemployer plan administered by the Government of Canada. The Canadian Human Rights Tribunal's contributions to the Plan are charged to expenses in the year incurred and represent the total departmental obligation to the Plan. Current legislation does not require the department to make contributions for any actuarial deficiencies of the Plan.

ii. **Severance benefits:** Employees are entitled to severance benefits under labour contracts or conditions of employment. These benefits are accrued as employees render the services necessary to earn them. The obligation relating to the benefits earned by employees is calculated using information derived from the results of the actuarially determined liability for employee severance benefits for the government as a whole.

g) **Accounts receivable and advances** are stated at amounts expected to be ultimately realized; a provision has not been made for receivables where recovery is considered uncertain since all receivables are considered to be recoverable.

h) Tangible capital assets – All tangible capital assets and leasehold improvements having an initial cost of $5,000 or more are recorded at their acquisition cost. Amortization of tangible capital assets is done on a straight-line basis over the estimated useful life of the asset as follows:

Asset Class	Amortization Period
Machinery and equipment	5 to 10 years
Furniture and fixtures	10 years
Informatics hardware & software	3 years

i) Measurement uncertainty —The preparation of these financial statements in accordance with Treasury Board accounting policies which are consistent with Canadian generally accepted accounting principles for the public sector requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses reported in the financial statements. At the time of preparation of these statements, management believes the estimates and assumptions to be reasonable. The most significant items where estimates are used are the liability for employee severance benefits and the useful life of tangible capital assets. Actual results could significantly differ from those estimated. Management's estimates are reviewed periodically and, as adjustments become necessary, they are recorded in the financial statements in the year they become known.

3. Parliamentary Appropriations

The Canadian Human Rights Tribunal receives most of its funding through annual Parliamentary appropriations. Items recognized in the statement of operations and the statement of financial position in one year may be funded through Parliamentary appropriations in prior, current or future years. Accordingly, the Canadian Human Rights Tribunal has different net results of operations for the year on a government funding basis than on an accrual accounting basis. The differences are reconciled in the following tables:

a) Reconciliation of net cost of operations to current year appropriations used

		2008	2007
		(in dollars)	
Net cost of operations		**5,235,950**	**5,756,342**
Adjustments for items affecting net cost of operations but not affecting appropriations			
Add (Less):	Services provided without charge	(1,110,179)	(1,165,942)
	Amortization of tangible capital assets	(67,589)	(51,545)
	Variation in vacation pay and compensatory leave	14,504	12,122
	Variation in employee severance benefits	(18,459)	0
Add:	Miscellaneous revenue	1,829	25
	Refund of previous year expenses	10	4,300
Adjustments for items not affecting net cost of operations but affecting appropriations			
Add:	Acquisitions of tangible capital assets	121,705	6,137
Current year appropriations used		**4,177,771**	**4,561,439**

b) Appropriations provided and used

	2008	2007
	(in dollars)	
Vote 15 – Program expenditures	4,102,548	4,289,378
Statutory Amounts	351,898	346,782
Less:		
Lapsed appropriations: Operating	(276,675)	(74,721)
Current year appropriations used	**4,177,771**	**4,561,439**

c) Reconciliation of net cash provided by Government to current year appropriations used

	2008	2007
	(in dollars)	
Net cash provided by Government	4,219,831	4,479,223
Revenue not available for spending	1,829	25
Refund of previous year expenses	10	4,300
Change in net position of the Consolidated Revenue Fund:		
Variation in accounts receivable and advances	1,837	(32,665)
Variation in accounts payable and accrued liabilities	(45,736)	110,556
	(43,899)	**77,891**
Current year appropriations used	**4,177,771**	**4,561,439**

4. Accounts Receivable and Advances

The following table presents details of accounts receivable and advances:

	2008	2007
	(in dollars)	
Receivables from other Federal Government departments and agencies	48,537	48,279
Receivables from external parties	2,597	4,692
Employee Advances	500	500
Total	**51,634**	**53,471**

5. Accounts Payable and Accrued Liabilities

The following table presents details of accounts payable and accrued liabilities:

	2008	2007
	(in dollars)	
Accounts payable to other Federal Government departments and agencies	111,670	31,916
Other accounts payable and accrued liabilities	225,597	351,087
Total	**337,267**	**383,003**

6. Tangible Capital Assets (in dollars)

Capital Asset Class	COST				ACCUMULATED AMORTIZATION				2008 Net book value	2007 Net book value
	Opening Balance	Acquisi-tions	Disposals And write-offs	Closing Balance	Opening Balance	Amortiz-ation	Disposals and write-offs	Closing balance		
Machinery and equipment	12,796	0	0	12,796	(5,230)	(1,302)	0	(6,532)	6,264	7,566
Furniture and fixtures	21,863	0	0	21,863	(12,803)	(2,520)	0	(15,323)	6,540	9,060
Informatics hardware and software	342,673	121,705	0	464,378	(262,645)	(63,767)	0	(326,412)	137,966	80,028
Total	**377,332**	**121,705**	**0**	**499,037**	**(280,678)**	**(67,589)**	**0**	**(348,267)**	**150,770**	**96,654**

Note: Amortization expense for the year ended March 31, 2008 is $67,589 (2007 - $51,545).

7. Employee Benefits

a) Pension benefits: Employees of the Canadian Human Rights Tribunal participate in the Public Service Pension Plan, which is sponsored and administered by the Government of Canada. Pension benefits accrue up to a maximum period of 35 years at a rate of 2 percent per year of pensionable service, times the average of the best five consecutive years of earnings. The benefits are integrated with Canada/Québec Pension Plans benefits and they are indexed to inflation.

Both the employees and the department contribute to the cost of the Plan. The 2007-08 expense amounts to $256,531 ($254,841 in 2006-07), which represents approximately 2.1 times (2.2 in 2006-07) the contributions by employees.

The department's responsibility with regard to the Plan is limited to its contributions. Actuarial surpluses or deficiencies are recognized in the financial statements of the Government of Canada as the Plan's sponsor.

b) Severance benefits: The Canadian Human Rights Tribunal provides severance benefits to its employees based on eligibility, years of service and final salary. These severance benefits are not pre-funded. Benefits will be paid from future appropriations. Information about the severance benefits, measured as at March 31, is as follows:

	2008	2007
	(in dollars)	
Accrued benefit obligation, beginning of year	431,825	431,825
Expense for the year	53,560	61,340
Benefits paid during the year	(35,101)	(61,340)
Accrued benefit obligation, end of year	**450,284**	**431,825**

8. Contractual Obligations

The nature of the Canadian Human Rights Tribunal activities can result in some large multi-year contracts and obligations whereby the department will be obligated to make future payments when the services/goods are received. Significant contractual obligations that can be reasonably estimated are summarized as follows:

	(in dollars)		
	2009	**2010 and thereafter**	**Total**
Goods and services	130,132	43,403	173,535

9. Related party transactions

The Canadian Human Rights Tribunal is related as a result of common ownership to all Government of Canada departments, agencies, and Crown corporations. The Canadian Human Rights Tribunal enters into transactions with these entities in the normal course of business and on normal trade terms. Also, during the year, the Canadian Human Rights Tribunal received services that were obtained without charge from other Government departments, as presented below.

Services provided without charge:

During the year the Canadian Human Rights Tribunal received without charge from other departments accommodation and the employer's contribution to the health and dental insurance plans. These services without charge have been recognized in the Canadian Human Rights Tribunal Statement of Operations as follows:

	2008	2007
	(in dollars)	
Accommodation	962,962	1,020,000
Employer's contribution to the health and dental insurance plans	147,217	145,942
Total	**1,110,179**	**1,165,942**

The government has structured some of its administrative activities for efficiency and cost-effectiveness purposes so that one department performs these on behalf of all without charge. The costs of these services, which include payroll and cheque issuance services provided by Public Works and Government Services Canada, are not included as an expense in the Canadian Human Rights Tribunal's Statement of Operations.

Section IV — Other Items of Interest

Governance Structure

The Canadian Human Rights Tribunal has a single mission: To contribute to the purpose of the *Canadian Human Rights Act* (CHRA) and the *Employment Equity Act* (EEA) in protecting individual Canadians from discrimination and promoting equality of opportunity. Accordingly, the Tribunal has one main activity — the hearing and determination of complaints of discrimination referred to it under the CHRA and EEA.

The Minister of Justice speaks to Parliament regarding issues relating to the operation of the Tribunal. The Chairperson of the Tribunal, as deputy head, has supervision over the direction of the Tribunal's work, including allocation of work among its members and the management of its internal affairs and resources.

The Tribunal's Senior Management Committee, chaired by the deputy head, has responsibility for managing activities related to the Tribunal's hearings program and is accountable for program performance. It is the principal form for deliberations on issues relating to program operations. The Management Committee has responsibility for administering the Tribunal's internal services, resources, property, personnel, procurement and expenditures. It focuses on policy and planning issues and advises the Senior Management Committee on matters relating to general supervision and direction of the Tribunal's hearing program.

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